

# HOUSE . . . . . No. 2861

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia for legislation to establish an independent office of quality assurance for mentally retarded persons. Mental Health and Substance Abuse.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT ESTABLISHING AN INDEPENDENT OFFICE OF QUALITY ASSURANCE  
FOR MENTALLY RETARDED PERSONS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Preamble—

2 WHEREAS, A stronger system of monitoring and quality assur-  
3 ance is required on the state level for individuals with mental  
4 retardation.

5 WHEREAS, The function of oversight, monitoring and quality  
6 assurance should be independent of the agency providing the serv-  
7 ices,

8 The Mass. General Laws are hereby amended by adding after  
9 chapter 19C, the following chapter:—

### 10 Chapter 19D.

#### 11 Office of Quality Assurance for Mentally Retarded Persons.

12 Section 1. The following words as used in this chapter shall,  
13 unless the context otherwise requires, have the following mean-  
14 ings:

15 “Office”, the independent office of quality assurance for per-  
16 sons with mental retardation.

17 “Department”, the department of mental retardation.

18 “Commissioner”, the commissioner of the department of mental  
19 retardation.

20 “Director”, the director of the independent office of quality  
21 assurance for persons with mental retardation.

22 “Person with mental retardation”, a person who, as a result of  
23 inadequately developed or impaired intelligence, as determined by  
24 clinical authorities as described in the regulations of the depart-  
25 ment of mental retardation is substantially limited in his ability to  
26 learn or adapt, as judged by established standards available for the  
27 evaluation of a person's ability to function in the community; or a  
28 person who is otherwise eligible for department of mental retarda-  
29 tion services. A person with mental retardation may be considered  
30 mentally ill provided that no person with mental retardation shall  
31 be considered mentally ill solely by virtue of mental retardation

32 “Board of Directors”, the directors of the office of quality  
33 assurance for mental retardation.

34 Section 2. Establishment of an Independent Office of Quality  
35 Assurance for Mentally Retarded Persons.

36 In order to protect the rights of mentally retarded persons and  
37 to assure accountability of all service providers, there shall be  
38 established an Independent Office of Quality Assurance, here-  
39 inafter referred to as the office.

40 There shall be a Director to act as administrative head of the  
41 office. S/he shall be appointed by majority vote of the state  
42 auditor, the governor, and the attorney general.

43 The person selected shall have experience in the delivery of  
44 services to the mentally retarded, be conversant with policies,  
45 statutes, rules and regulations related to mental retardation cur-  
46 rently in force and possess a background in civil and administra-  
47 tive law. The Director shall be assisted by adequate staff and a  
48 board of directors.

49 The Director, pursuant to the provisions of chapter 30A shall  
50 make and, from time to time, revise such regulations as may be  
51 necessary to carry out the functions set forth in this chapter.

52 Assistants and staff for the Independent Office of Quality  
53 Assurance shall be established via the transfer of all currently  
54 authorized positions and budget in the Department of Mental  
55 Retardation engaged in “internal” self-evaluation, monitoring,  
56 quality assurance and human rights functions. The current budget  
57 and staff of the Governor's Commission of Mental Retardation  
58 will also be transferred to the office. Not less than 80 full time  
59 equivalent positions shall comprise the office.

60 Section 3. Functions

61 Said office shall be independent of all agencies within the exec-  
62 utive office of health and human services. Said office shall be  
63 responsible for monitoring all elements of service provision for  
64 the mentally retarded described by statutes, rules and regulations,  
65 plus all federal entitlements in which the commonwealth partici-  
66 pates.

67 Subject to approval by the board of directors, the director of the  
68 office may lease, purchase, hold and dispose of personal and real  
69 property facilitating execution of his duties.

70 The director may require by summons, the production of all  
71 records, reports, audits, reviews, papers, books, documents, rec-  
72 ommendations, correspondence and any other data and material  
73 relevant to any matter under audit or investigation regarding  
74 service provision to a mentally retarded person. All records of the  
75 department, disabled persons protection commission and the  
76 department of public health division of healthcare quality shall be  
77 accessible to the office.

78 Subject to the approval of said board, the director may apply  
79 for and accept, on behalf of the Commonwealth any federal, local  
80 or private grants, bequests, gifts or contributions to aid in the  
81 financing of any of the programs or policies of the office, pro-  
82 vided such acceptance does not conflict with the independence of  
83 the office.

84 Such funds shall be received by the state treasurer on behalf of  
85 the Commonwealth and deposited in a separate account and shall  
86 be expended under the direction of the director to accomplish the  
87 mandates of the office. Federal funds paid as reimbursement shall  
88 be deposited in the General Fund.

89 The office may make agreements with other departments and  
90 agencies of the Commonwealth and may contract with other per-  
91 sons, including private agencies, to carry out any of the functions  
92 and purposes under this chapter. The director shall establish stan-  
93 dards and procedures governing such agreements and contracts  
94 subject to the approval of the state auditor, the governor and the  
95 attorney general.

96 The director may appoint such assistants and staff deemed nec-  
97 essary to perform adequate monitoring of agency and contractor  
98 groups serving retarded persons with special emphasis on the  
99 development of individual service plans and effective implemen-  
100 tation of these plans to each service recipient.

101 The director, the office and any person they may designate shall  
102 have access at any and all reasonable times to any mental retarda-  
103 tion facility, residence, program, or part thereof, and to all rele-  
104 vant records, reports, materials, and employees, in order to allow  
105 them to monitor the quality with which such needs are being met.  
106 Such authority can be used to establish a program of citizen moni-  
107 tors.

108 Section 4. Responsibilities.

109 The office shall be responsible for the development of a fixed  
110 schedule and random method of monitoring the effectiveness and  
111 quality of all service providers including facility and community  
112 programs.

113 In order to carry out its mission of assuring a continued high  
114 level of care and to execute its responsibility as set forth, the  
115 office shall establish its own procedures and mechanisms for mon-  
116 itoring and evaluating the care of mentally retarded persons, and  
117 shall undertake the following: receive information, reports and  
118 complaints from employees, mentally retarded persons, their fami-  
119 lies or representatives and others regarding effectiveness and ade-  
120 quacy of quality assurance mechanisms; report all cases of abuse,  
121 mistreatment and neglect coming to the attention of the office in  
122 the normal course of its duties to the disabled persons protection  
123 commission; identify areas where agencies are failing to comply  
124 with and enforce applicable federal and state laws, regulations,  
125 standards and policies and require that those agencies take action  
126 to correct inadequacies; investigations and reviews in order to  
127 draw independent conclusions relative to the adequacy of care, the  
128 protection of individuals' rights, the functioning of human rights  
129 committees, and the effectiveness of quality assurance mecha-  
130 nisms, with specific attention to issues of the safety and security  
131 of mentally retarded persons; and subsequently require correction  
132 or resolution of problems. A report of the findings of any such  
133 activity shall be provided to the head of the appropriate agency, as  
134 well as his or her designated manager responsible for such  
135 service, and if problems are identified, such designated manager  
136 shall make a written report within a suitable time frame as  
137 requested by the director, but not more than ten working days, of  
138 actions taken to correct each problem; identify and report on areas  
139 where agencies and service providers are demonstrating superior  
140 efforts in the provision of services to mentally retarded persons.

141 In addition, the office may: receive information and complaints  
142 from mentally retarded persons, their families or representatives  
143 and others regarding the adequacy of care and services to these  
144 citizens; determine whether those individuals have made full use  
145 of existing procedures for obtaining services, or otherwise  
146 addressing their concerns; and if they have not, fully inform them  
147 of the appropriate mechanisms within the agency for doing so, and  
148 if they have sought but not obtained relief from those mecha-  
149 nisms, or if existing mechanisms are inadequate to resolve the  
150 problem, recommend or, if determined necessary by the director,  
151 mandate means of resolution; shall receive, upon request from any  
152 agency of the state and any private service provider assistance,  
153 information and data that will enable the office to fulfill its func-  
154 tions, powers and duties.

155 The director shall report in writing, at least annually, and as  
156 deemed necessary to secure corrective action, to the three appoint-  
157 ment authorities. The report shall include: narrative and statistical  
158 degree of compliance to ISP driven needs or mentally retarded  
159 persons; identification of agencies and/or contractor service  
160 providers deemed chronically deficient or poorly administered;  
161 recommendations that would improve efficiency and cost effec-  
162 tiveness in the service delivery system.

163 The director shall issue special reports as needed on issues or  
164 conditions in the course of the office's oversight function.

165 The director office staff and the board shall have ready access  
166 for purposes of scheduled auditing, random sampling, and when  
167 responding to specific complaints, to any and all public and pri-  
168 vate facilities and programs contracting to serve mentally retarded  
169 persons, whether licensed or unlicensed.

170 The office shall conduct ongoing monitoring of compliance  
171 with regulations governing the care of mentally retarded persons;  
172 requesting and receiving status reports on the progress toward  
173 completion of outstanding corrective action plans; death reports,  
174 class member identification lists, reports of facility admissions,  
175 transfers and outplacements shall be provided to the office by the  
176 department; maintaining contact with federal oversight agencies  
177 to identify areas of concern where the Commonwealth has not  
178 complied with federal standards and to ensure that the appropriate  
179 state agencies devise means for implementing compliance, to

180 assure continued entitlement; receive copies of compliance  
181 reviews conducted by the Health Care Financing Administration.

182 Section 5. Resources.

183 Adequate resources will be made available to fund the office in  
184 accordance with the staffing recommendations included herein.  
185 The director shall, in accordance with state regulations, select the  
186 staff of the office, define staff responsibilities and establish appro-  
187 priate compensation levels for all employees.

188 The salary of the director shall not exceed the salary grade of  
189 the Commissioner mental retardation.

190 Section 6. Board of Directors.

191 There shall be established a board of directors to the office.  
192 Said board shall advise and assist the office in seeking account-  
193 ability from the providers of service and care to mentally retarded  
194 persons.

195 The board of directors shall consist of fifteen members and  
196 shall be constituted as follows: one representative from the Coali-  
197 tion of Families and Advocates for the Retarded, Inc. (COFAR);  
198 one representative from Arc Massachusetts, Inc.; one representa-  
199 tive from the Advocacy Network; one representative of each of  
200 the five DMR Regional Citizen Advisory Boards; 5 citizen repre-  
201 sentatives selected from among professional associations in the  
202 fields of medicine, nursing, psychology, social work and special  
203 education; the secretary of the executive office of health and  
204 human services or his/her designee; the executive director of the  
205 disabled person protection commission.

206 The board of directors shall meet at least monthly with the  
207 director, and at other times as the director deems necessary and  
208 shall assist the director in planning and reviewing the activities of  
209 the office; recommend to the director for his/her consideration,  
210 issues that need to be pursued; at the director's request, review  
211 such additional reports and materials that would enable the office  
212 to more effectively evaluate the care of mentally retarded persons;  
213 bring issues to the attention of the office that either aid in its eval-  
214 uation of the quality of care to mentally retarded persons or war-  
215 rant its intervention, as the director deems necessary and  
216 appropriate, accompany office staff on visits to selected program  
217 locations; and serve as a vehicle for communication between the  
218 Commonwealth's citizenry and the office.

219 The director shall, in accordance with the office's budget, make  
220 available to the board of directors secretarial support and supplies,  
221 and reimbursement at reasonable expense, to enable the board of  
222 directors to carry out its functions and duties.

223 Section 7. Evaluation.

224 Four years after the establishment of the office, an independent  
225 evaluation, under contract with the State Auditor's Office, shall be  
226 conducted to determine the effectiveness of the office and recom-  
227 mend appropriate actions such as continuance or other options as  
228 may be warranted to include but not be limited to a merging of the  
229 office with the disabled persons protection commission and/or a  
230 broadening of scope to include mentally ill persons and/or other  
231 disabled populations.